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BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

APR - 3 2000

CARL J. KUNASEK
CHAIRMANJIM IRVIN
COMMISSIONERWILLIAM A. MUNDELL
COMMISSIONER

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF
ARIZONA PUBLIC SERVICE COMPANY FOR
APPROVAL OF ITS PLAN FOR STRANDED
COST RECOVERY.

DOCKET NO. E-01345A-98-0473

IN THE MATTER OF THE FILING OF ARIZONA
PUBLIC SERVICE COMPANY OF UNBUNDLED
TARIFFS PURSUANT TO A.A.C. R14-2-1601, ET.
SEQ.

DOCKET NO. E-01345A-97-0773

IN THE MATTER OF THE COMPETITION IN
THE PROVISION OF ELECTRIC SERVICES
THROUGHOUT THE STATE OF ARIZONA.

DOCKET NO. RE-00000C-94-0165

DECISION NO. 62416OPINION AND ORDER

DATE OF HEARING:

January 24, 2000

PLACE OF HEARING:

Phoenix, Arizona

PRESIDING OFFICER:

Jane L. Rodda

APPEARANCES:

APPEARANCES: Mr. Steven M. Wheeler and Mr.
Jeffrey B. Guldner, SNELL & WILMER, L.L.P., on
behalf of Arizona Public Service Company;Mr. Robert S. Lynch on behalf of the Arizona
Transmission Dependent Utility Group;Ms. Jessica Carpenter, Staff Attorney, on behalf of the
Residential Utility Consumer Office; andMs. Janet Wagner, Staff Attorney, Legal Division, on
behalf of the Utilities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

On October 6, 1999, the Arizona Corporation Commission ("Commission") issued Decision No. 61973. In Decision No. 61973, the Commission ordered Arizona Public Service Company ("APS") to file, within 30 days, a Code of Conduct for Commission approval. APS thereafter filed with the Commission on October 28, 1999 a proposed Code of Conduct. APS indicated that it had

1 sent copies of the proposed Code of Conduct to parties of record in Docket Nos. E-01345A-98-0
2 E-01345A-97-0773, RE-00000C-94-0165.

3 On November 9, 1999, the Commission issued a Procedural Order directing interested parties
4 to provide comments on the APS proposed Code of Conduct filed on October 28, 1999. Enron Corp.,
5 New West Energy, the Arizona Transmission Dependent Utility Group ("ATDUG"), and
6 Commission Utilities Division Staff ("Staff") all filed comments. Staff's comments were filed in the
7 form of direct testimony and included an alternative proposed Code of Conduct.

8 In accordance with the November 9, 1999, Procedural Order, APS filed a final proposed Code
9 of Conduct on January 5, 2000. Staff and ATDUG filed comments on APS' final proposed Code of
10 Conduct on January 18, 2000. Staff's comments were filed as rebuttal testimony and included a
11 revised alternative proposed Code of Conduct. In response, APS filed the direct testimony of Jack E.
12 Davis on January 21, 2000.

13 The matter came before a duly authorized Hearing Officer of the Commission at the
14 Commission's offices on January 24, 2000. APS and Staff presented evidence at the hearing. S
15 submitted as Exhibit S-3 a revised version of its January 18, 2000, proposed Code of Conduct. APS'
16 and Staff's witnesses were subject to or available for cross-examination by all parties attending the
17 hearing. At the conclusion of the hearing, Staff and APS advised the Hearing Officer that they
18 intended to continue efforts to reach agreement on a Code of Conduct. The matter was taken under
19 advisement pending submission of a Recommended Opinion and Order to the Commission.

20 On February 22, 2000, Staff and APS jointly submitted a Stipulation which included as
21 attachments a red-line version of the Joint Proposed Code of Conduct reflecting modifications to
22 Staff's alternative proposed Code of Conduct (Exhibit S-3), and a recommended form of order. In
23 their Stipulation, Staff and APS request that the Joint Proposed Code of Conduct be approved as
24 APS' Code of Conduct required by A.A.C. R14-2-1616. Staff and APS indicated that they had sent
25 copies of the Joint Proposed Code of Conduct to parties of record in the above-captioned matters.

26 At the hearing, the major disagreements among the parties involved the transfer pricing
27 between affiliates (Section XI), the procedure for approving changes to the Policies and Procedu
28 manual ("P&P") (Section VIII), reporting requirements associated with information necessary to

1 monitor compliance with the code, and the scope of the prohibition against the dissemination of
2 Confidential Customer Information.

3 Subsequent to the hearing, APS agreed with Staff's recommendations that the transfer of
4 goods and services from APS' Competitive Electric Affiliates to APS should be at the lower of fully
5 allocated cost or fair market value. The parties also agreed that APS shall submit material changes to
6 its P&P to the Director of the Utilities Division for approval. If the Director takes no action on the
7 proposed changes within 30 days, such changes shall be deemed approved. APS also agreed to
8 Staff's recommended annual reports. The parties rejected, however, ATDUG's recommendation to
9 broaden the prohibition against providing Confidential Customer Information to include "any other
10 entity that may lawfully provide Competitive Services as defined in R14-2-1601(7)."

11 We concur with the modifications to Staff's proposed Code of Conduct that the parties
12 negotiated following the hearing. We find that the Joint Proposed Code of Conduct submitted by
13 APS and Staff with their Stipulation is in most respects sufficient, however, we believe it would be
14 strengthened by the following modifications:

15 Section VII.B, concerning the "Prohibition on Suggestion of Utility Advantage", currently
16 prohibits an Electric Service Provider from using APS' name or logo in any written promotional
17 advertising material. We concur with the Arizona Consumers Council that the prohibition on the use
18 of APS' name and logo should not be limited to written materials. Therefore, we delete "written"
19 from Section VII.B.

20 We concur with ATDUG that APS should not be able to use confidential information in an
21 unfairly discriminatory way. ATDUG suggests broadening the definition of "Third Party" in the
22 Code of Conduct to include "or other market participants" to be consistent with the terminology of
23 the Electric Competition Rules. APS argued against the modification in part on the grounds the
24 Commission did not have jurisdiction over these entities. We further modify the term "or other
25 market participants" as follows: "or other market participants that may lawfully provide competitive
26 services to retail customers". However, by adding the term "or other market participants that may
27 lawfully provide competitive services to retail customers" the Commission is not asserting
28 jurisdiction over these other entities, but is preventing APS from unfairly discriminating against

1 them. The Commission does have jurisdiction over APS' conduct. Consequently, in Section I.
 2 insert "or other market participants that may lawfully provide competitive services to retail
 3 customers" in the definition of "Third Party" after "Electric Service Provider".

4 We also believe that APS' own suggestion to add language clarifying the definition of
 5 "Confidential Customer Information" is reasonable. In Section I, at the end of the definition of
 6 "Confidential Customer Information" we would add "Confidential Customer Information also
 7 includes non-public customer-specific information obtained by APS from customers of special
 8 districts and public power entities on behalf of such special districts and public power entities.

9 Section VIII. B. which provides that violations of the P&P which constitute unlawful anti-
 10 competitive behavior would be deemed a violation of the Code of Conduct, should be broadened to
 11 encompass all unlawful anti-competitive behavior whether specifically violating the P&P or not.
 12 Consequently, we would add "or other activity" following "P&P" in the last sentence of Section
 13 VIII.B.

14 In addition, with respect to Section XIV concerning Procedures to Modify the Code
 15 Conduct, we believe that the Commission and any other affected party should be able to request
 16 modifications to APS' Code of Conduct in the event future circumstances prove that the current
 17 version of the Code is inadequate to promote competition and meet the requirements or spirit of R14-
 18 2-1616. Consequently, we modify Section XIV by adding "or any other interested party, including
 19 Commission Staff" after "APS" in the first sentence of Section XIV.

20 We find that as modified hereinabove, the Joint Proposed Code of Conduct is fair and
 21 reasonable and complies with the requirements of A.A.C R14-2-1616.

22 * * * * *

23 Having considered the entire record herein and being fully advised in the premises, the
 24 Commission finds, concludes, and orders that:

25 FINDINGS OF FACT

26 1. In Decision No. 61973, the Commission ordered APS to submit a proposed Code of
 27 Conduct for Commission approval.

28 2. On October 28, 1999, APS filed a proposed Code of Conduct in accordance with

1 Decision No. 61973.

2 3. On November 9, 1999, the Commission issued a Procedural Order setting a hearing
3 for January 24, 2000, and directing Staff and interested parties to file comments on APS' proposed
4 Code of Conduct by December 6, 1999.

5 4. Enron Corp., New West Energy, ATDUG, and Staff filed comments on APS' October
6 28, 1999 Code of Conduct.

7 5. Staff recommended that the Commission approve an alternative Code of Conduct
8 submitted with Staff's comments.

9 6. In accordance with the November 9, 1999, Procedural Order, APS filed a final
10 proposed Code of Conduct on January 5, 2000.

11 7. On January 18, 2000, as permitted by the Procedural Order, Staff and ATDUG filed
12 comments on APS' January 5, 2000, Code of Conduct.

13 8. Staff's comments included a revised alternative Code of Conduct that Staff
14 recommended the Commission approve.

15 9. On January 24, 2000, a public hearing was held as scheduled.

16 10. APS and Staff presented evidence regarding how their proposed Codes of Conduct
17 would address anti-competitive activities. Staff submitted a revised proposed Code of Conduct as
18 Exhibit S-3.

19 11. At the conclusion of the hearing, Staff and APS indicated that they intended to discuss
20 the resolution of differences between Staff's proposed alternative Code of Conduct and APS'
21 proposed Code of Conduct.

22 12. On February 22, 2000, Staff and APS jointly filed a Stipulation and a Joint Proposed
23 Code of Conduct based on the alternative proposed Code of Conduct submitted by Staff at the
24 hearing. A copy of the Stipulation and Joint Proposed Code of Conduct is attached as Attachment A
25 and incorporated herein by reference.

26 13. The Joint Proposed Code of Conduct should be modified as discussed herein.

27 14. The Joint Proposed Code of Conduct, as modified herein, applies to the conduct of
28 APS and its competitive retail electric affiliates.

15. The Joint Proposed Code of Conduct, as modified herein, prohibits APS from subsidizing its competitive retail electric affiliates through rates or charges for Noncompetitive Services, as that latter term is defined in A.A.C. R14-2-1601(29).

16. The Joint Proposed Code of Conduct, as modified herein, includes provisions governing separation of books and records; the use of confidential information; the joint employment of personnel; the use of APS' name or logo; nondiscrimination; joint advertising, marketing, and sales; representations regarding quality of service; and complaint resolution.

17. The Joint Proposed Code of Conduct, as modified herein, also addresses procedures governing transactions between APS and a competitive retail electric affiliate.

18. The Joint Proposed Code of Conduct, as modified herein, requires that APS develop Policies and Procedures to address the implementation of this Code of Conduct, and provides that the Director of the Utilities Division shall approve the Policies and Procedures.

19. The Joint Proposed Code of Conduct, as modified herein, provides that non-substantial changes to such Policies and Procedures would become effective pending the Director's review while substantial changes to such Policies and Procedures become effective in 30 days if not modified or rejected by the Director.

CONCLUSIONS OF LAW

1. APS is a public service corporation within the meaning of Article XV, Section 3 of the Arizona Constitution, and an "Affected Utility" within the meaning of A.A.C. R14-2-1601, *et seq.*

2. Notice of the proceeding was provided as required by law.

3. The Joint Proposed Code of Conduct attached as Attachment A, and as modified herein, satisfies the requirements of A.A.C. R14-2-1616 and Decision No. 61973 and is supported by the evidence in this proceeding.

4. The Policies and Procedures developed to implement the Code of Conduct are to be consistent with the Joint Proposed Code of Conduct, as modified herein, and may be amended in accordance with the procedures set forth herein.

ORDER

IT IS THEREFORE ORDERED that that the Joint Proposed Code of Conduct as modified

herein, is approved.

IT IS FURTHER ORDERED that Arizona Public Service Company shall file a revised Code of Conduct that complies with the modifications approved herein within ten days of the effective date of this Order.

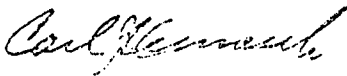
IT IS FURTHER ORDERED that the Interim APS Code of Conduct dated August 6, 1999 is hereby replaced and superceded by the Joint Proposed Code of Conduct, as modified and approved herein.

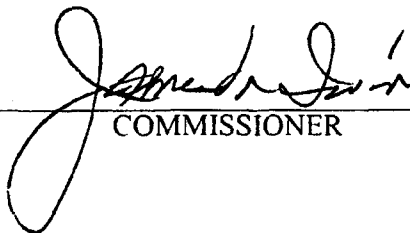
IT IS FURTHER ORDERED that Arizona Public Service Company shall submit revised Policies and Procedures to implement the Code of Conduct, as modified herein, to the Director of the Utilities Division for approval within 60 days of the date of this Decision.

IT IS FURTHER ORDERED that this Decision and the Joint Proposed Code of Conduct, as modified herein, shall become effective immediately.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

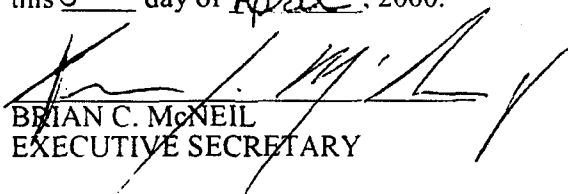
BY ORDER OF THE ARIZONA CORPORATION COMMISSION.


CHAIRMAN


COMMISSIONER


COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 3rd day of April, 2000.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____
JR:dap

1 SERVICE LIST FOR: ARIZONA PUBLIC SERVICE COMPANY
2 DOCKET NOS.: E-01345A-98-0473, E-01345A-97-0773 and RE-
3 00000C-94-0165
4 Service List for RE-00000C-94-0165
5 Lyn Farmer, Chief Counsel
6 LEGAL DIVISION
7 1200 W. Washington Street
8 Phoenix, Arizona 85007
9 Deborah Scott, Director
10 UTILITIES DIVISION
11 1200 W. Washington Street
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BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER

IN THE MATTER OF THE APPLICATION OF
ARIZONA PUBLIC SERVICE COMPANY FOR
APPROVAL OF ITS PLAN FOR STRANDED
COST RECOVERY

) DOCKET NO. E-01345A-98-0473

IN THE MATTER OF THE FILING OF ARIZONA
PUBLIC SERVICE COMPANY OF UNBUNDLED
TARIFFS PURSUANT TO A.A.C. R14-2-1601.
ET SEQ.

) DOCKET NO. E-01345A-97-0773

IN THE MATTER OF THE COMPETITION
IN THE PROVISION OF ELECTRIC SERVICES
THROUGHOUT THE STATE OF ARIZONA

) DOCKET NO. RE-00000C-94-0165

**STIPULATION OF COMMISSION STAFF AND ARIZONA PUBLIC SERVICE
COMPANY REGARDING CODE OF CONDUCT**

Arizona Corporation Commission ("Commission") Staff and Arizona Public Service Company ("APS") submit the following Stipulation regarding APS' Code of Conduct, which was required by Decision No. 61973 and A.A.C. R14-2-1616:

1. Following the January 24, 2000 hearing in this matter, APS and Staff commenced discussions on modifying the proposed Code of Conduct that was submitted by Staff at the hearing as Exhibit S-3.

2. In these discussions, APS suggested changes to Staff's proposed Code of Conduct. APS provided copies of these suggested changes to RUCO and the Arizona Transmission Dependent Utilities Group ("ATDUG")—the two other parties that appeared at the January 24,

1 2000 hearing—and invited comments on APS' proposed changes to Staff's proposed Code of
2 Conduct.

3 3. Staff and APS resolved several issues regarding APS' suggested changes to Staff's
4 proposed Code of Conduct, resulting in a Joint Proposed Code of Conduct. A copy of the Joint
5 Proposed Code of Conduct showing the changes made from the proposed Code of Conduct
6 submitted at the hearing as Exhibit S-3 is attached hereto as Exhibit A and incorporated by
7 reference. A copy of the Joint Proposed Code of Conduct was then provided to all parties that
8 participated at the hearing or filed comments on the Code of Conduct.

9 4. APS and Staff received and considered comments and questions from RUCO,
10 ATDUG, and Enron Corp. on the Joint Proposed Code of Conduct.¹ RUCO expressed support
11 for the Joint Proposed Code of Conduct. APS and Staff adopted Enron's suggestion that APS and
12 any competitive retail electric affiliate have separate websites as well as telephone numbers.
13 Enron also recommended that the phrase "without the express permission of the Arizona
14 Corporation Commission" be deleted from Section VII.E. APS and Staff did not accept that
15 recommendation. ATDUG expressed concern that the definition of "Confidential Customer
16 Information" was not sufficiently broad to include protection for ATDUG's customers. ATDUG
17 suggested that the definition of "Third Party" be broadened. After considering these comments,
18 APS and Staff declined to adopt such changes to the Code of Conduct.

19 5. Staff and APS agree that the Commission may adopt the Joint Proposed Code of
20 Conduct as APS' Code of Conduct required by Decision No. 61973 and A.A.C. R14-2-1616.

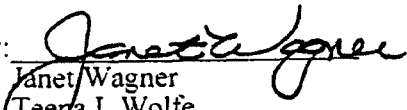
21 6. Additionally, Staff and APS jointly submit the proposed form of order attached as
22 Exhibit B for the consideration of the Hearing Officer in this matter. The proposed form of order
23 includes a clean copy of the Joint Proposed Code of Conduct as an Attachment.

24
25 ¹ RUCO, ATDUG and Enron Corp. filed substantive comments on the various versions of
26 the Code of Conduct filed by APS in this proceeding. New West Energy filed comments
supporting APS' first proposed Code of Conduct, but did not substantively comment on the Code of
Conduct. Of these parties, only RUCO and ATDUG appeared at the hearing in this matter.

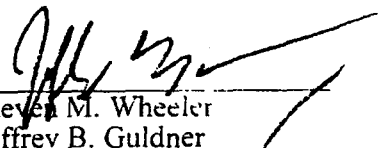
1 7. APS respectfully requests that the Commission consider this matter at the March 1,
2 2000 Open Meeting. APS advised RUCO, ATDUG, Enron and New West Energy—all the
3 parties that either filed comments in this docket or attended the hearing—of this request. RUCO,
4 Enron, and ATDUG affirmatively advised APS that they did not oppose such expedited
5 consideration as of the date of this Stipulation. New West Energy has not advised APS that it
6 objects to such expedited consideration.

7 RESPECTFULLY SUBMITTED this 22nd day of February, 2000.

8
9
10 By:


Janet Wagner
Teena I. Wolfe
Arizona Corporation Commission
Legal Division
(602)542-3402

By:


Steven M. Wheeler
Jeffrey B. Guldner
SNELL & WILMER, L.L.P.
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(602)382-6271

Attorneys for Arizona Public Service
Company

1 Original and ten copies of the
2 foregoing filed this 22 day of
February, 2000. with Docket
Control

3
4 A copy of the foregoing was
mailed this 22 day of February,
2000 to:

5 All parties of record herein.

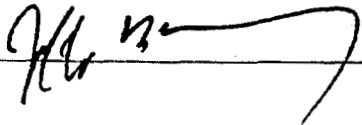
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EXHIBIT A

~~E-01345A-98-0473, E-01345A-97-00773, RE 00000C 94-0165~~

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Exhibit 2

~~STAFF'S REVISED CODE OF CONDUCT~~**I. Definitions**~~The following terms in the code of conduct shall have the following meanings:~~

"APS" ~~shall mean~~ Arizona Public Service Company as it currently exists, as its name may be changed, or as any successor enterprise.

"Bill" ~~shall mean~~ the billing invoice for ~~non~~competitive ~~services~~.

"Competitive Activities" ~~shall mean~~ ~~"competitive electric affiliate(s)"~~ ~~"interim competitive activities"~~ or ~~"permitted competitive activities"~~ as those terms are defined in this ~~code of conduct~~.

"Competitive Electric Affiliate" ~~shall mean~~ any business enterprise related to APS that is also an ~~electric service provider~~.

"Competitive Services" ~~shall mean~~ all aspects of retail electric services described in A.A.C. R14-2-1601(7).

"Confidential Customer Information" ~~shall mean~~ any ~~non-public~~ customer-specific information obtained by APS as a result of providing ~~non~~competitive ~~services~~ or ~~permitted competitive activities~~.

"Confidential Information" means Confidential Customer Information as that term is defined in this Code of Conduct and any other information obtained through the provision of Noncompetitive Services that would provide a competitive advantage to a Competing Electric Affiliate.

"Distribution Service" ~~shall mean~~ those services described in A.A.C. R14-2-1601(14).

"Electric Competition Rules" ~~shall mean~~ ~~A.A.C. R14-2-1601 to 1617~~ ~~including~~ ~~future amendments and modifications~~ as attached to this code of conduct, including all future amendments and modifications.

"Electric Service Provider" ~~shall mean~~ an entity as described in A.A.C. R14-2-1601(15).

"Extraordinary Circumstance" ~~shall mean~~ any situation ~~which that~~ requires APS to act in a manner contrary to this ~~code of conduct in order to~~ protect public interest or safety. Examples include the following: (a) an abnormal system condition requiring manual or automatic action to maintain system frequency, to prevent loss of firm load, to prevent equipment damage, or to prevent disconnection of system elements that could adversely affect reliability or safety; (b) a fuel shortage requiring departure from normal operating procedures ~~in order to~~ minimize the use of a particular fuel; (c) a condition that requires

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Exhibit 2

implementation of emergency procedures as defined in the AISA operating protocols or protocols of any successor; or (d) any applicable law, regulation, court order, or regulatory agency directive requiring APS to act in a manner contrary to the Code of Conduct.

"Interim Competitive Activities" shall mean any competitive services, exclusive of those set forth in A.A.C. R14-2-1615(B), that APS may lawfully provide until December 31, 2002.

"Noncompetitive Services" shall mean those services described in A.A.C. R14-2-1601(29).

"Permitted Competitive Activities" shall mean those competitive services that APS may provide pursuant to A.A.C. R14-2-1615(B), except for any service provided as part of standard offer service.

"Policies and Procedures" or **"P&P"** means those policies and procedures developed by APS to implement this Code of Conduct.

"Same Terms" — means that APS shall provide noncompetitive services to its competitive activities and third parties on the same terms and conditions.

"Standard Offer Service" means the bundled provision of retail electric service as described in A.A.C. R14-2-1601(38).

"Third Party" — means any electric service provider that does not fall within the definition of APS or competitive activities, as those terms are defined in this Code of Conduct.

II. Applicability of Code of Conduct

The following rules Code of Conduct shall apply to the conduct of APS and its competitive activities, unless an extraordinary circumstance excuses compliance.

All employees and authorized agents of APS shall conduct their activities in compliance with the requirements of this Code of Conduct. Failure to conduct activities in compliance with this Code of Conduct will subject the employee to disciplinary actions as described in Section XIII of this code.

III. Treatment of Similarly Situated Persons

- A. APS shall apply its tariffs in the same manner to similarly situated entities. If a tariff provision allows for discretion in its application, APS shall apply that provision in a non-discriminatory manner between its competitive activities and all other third parties and their respective customers.

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Exhibit 2

- B. APS shall process all similar requests for ~~Noncompetitive~~ Services and for ~~Permitted~~ Competitive activities, if applicable, in the same manner and ~~within~~ in the same time period.
- C. APS shall provide access to ~~distribution~~ service-specific information (including information about available distribution capability, transmission access, and curtailments) to its Competitive ~~Electric Affiliate~~ activities and ~~third~~ Third Parties concurrently and under the same terms and conditions.

IV. Use of Confidential Customer Information

- A. APS shall not provide Confidential Customer Information to any ~~Competitive Electric Affiliate or Third Party~~ without the customer's written authorization. Such information may be provided only to the extent specifically authorized.
- B. APS shall inform any ~~party~~ Competitive Electric Affiliate or Third Party seeking Confidential Customer Information that such information may be released only after APS receives the customer's written authorization.

V. Use of the Bill and Promotions within the Bill Envelope

- A. If APS decides to include any amounts due for its Competitive Activities within the Bill, APS shall develop a section in its ~~P&P Manual~~ to ensure equal access to billing services for ~~third party electric service providers~~ Third Parties ~~certified by the Arizona Corporation Commission, which shall~~ provide that APS will include in its Bill the amounts due for Competitive Services to any Third Party on the Same Terms, upon request.
- B. This provision shall not prevent APS' Competitive Activities or any Third Party from including amounts due for ~~Noncompetitive~~ Services in its own consolidated billing statement, as long as the customer receiving such consolidated billing statement has authorized APS' Competitive Activities or a Third Party, as applicable, to act as its agent for such purpose.
- C. If APS chooses to ~~insert~~ any advertising or promotional materials for its Competitive Activities or for any Third Party's ~~e~~Competitive electric Services into the envelope for the Bill or to print such advertisements on the Bill or billing envelope, APS shall develop a section in its ~~P&P Manual~~ to ensure equal access to advertising space in ~~and/or on the B~~ill or billing envelope.

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Exhibit 2

VI. Customer Telephone Calls

Telephone numbers ~~and~~ ~~services~~ used by APS for provision of ~~noncompetitive~~ ~~services~~ shall be different from those used ~~by~~ its ~~competitive~~ ~~electric~~ ~~affiliate~~.

VII. Prohibition on Suggestion of Utility Advantage

- A. APS shall not state in any advertising, promotional materials, or sales efforts that a consumer who purchases services from APS' ~~competitive~~ ~~activities~~ will receive preferential treatment in the provision of ~~noncompetitive~~ ~~services~~ or that any other advantage regarding the provision of ~~noncompetitive~~ ~~services~~ will accrue to that consumer.
- B. ~~The name or logo of APS as a utility distribution company~~ shall not be used in written promotional advertising material circulated by a ~~competitive~~ ~~electric~~ ~~affiliate~~.
- C. APS' personnel shall not specify to any customer or potential customer a preference for any ~~competitive~~ ~~service~~ provided by APS' ~~competitive~~ ~~activities~~ over those of any ~~third~~ ~~party~~.
- D. APS' personnel shall not specify to any customer or potential customer a preference for any ~~competitive~~ ~~service~~ provided by a ~~third~~ ~~party~~ over any ~~competitive~~ ~~service~~ provided by any ~~other~~ ~~other~~ ~~third~~ ~~party~~.
- E. APS' personnel engaged in the provision of ~~providing~~ ~~noncompetitive~~ ~~services~~ shall either inform customers who inquire about ~~competitive~~ ~~services~~ that a list of ~~electric~~ ~~service~~ ~~providers~~ is available at no charge from the Arizona Corporation Commission on its website or by telephone, and ~~upon request~~ shall provide the customers with the appropriate Arizona Corporation Commission website address and telephone number, or ~~in the alternative, shall~~ ~~may~~ provide such customers with a copy of the current Arizona Corporation Commission list ~~of such providers~~.
- F. APS shall not require that a consumer purchase any ~~competitive~~ ~~service~~ from APS' ~~competitive~~ ~~activities~~ as a condition to providing ~~noncompetitive~~ ~~services~~.
- G. Prior to the divestiture of APS generation pursuant to Arizona Corporation Commission Decision No. 61973 (October 6, 1999), APS generation service ~~will~~ ~~shall~~ not be sold on a discounted basis to ~~Standard~~ ~~Offer Service~~ customers without the express permission of the Arizona Corporation Commission.

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Exhibit 2

VIII. Accounting for Costs

A. APS shall not ~~erase~~ subsidize its ~~its~~ competitive ~~activities~~ with through ~~un-~~ rates or ~~and~~ charges for ~~non-~~ competitive ~~services~~. However, this provision does not require APS to charge more than its authorized tariff rate for any noncompetitive service.

B. All transactions between APS and its competitive ~~electric~~ affiliate shall be accounted for in accordance with APS' ~~Manual~~ P&P, ~~which~~ which shall be developed to describe the cost allocation of all transactions pertaining to APS and its competitive ~~electric~~ affiliate in a manner that ensures that there is no subsidization of the competitive ~~electric~~ affiliate by the ~~non-~~ competitive ~~services~~ of APS. Any material violation of the P&P which would constitute engagement in unlawful anticompetitive behavior shall constitute a violation of this Code of Conduct.

C. The ~~P&P~~ shall be submitted to the Director of the Utilities Division for review and approval. Beginning one year from the date of approval of the ~~P&P~~, APS shall file annual updates to the P&P, including any and all modifications to allocation methods and changes in direct and indirect allocators used in the P&P, with the Director of the Utilities Division for review and approval. If the Director of the Utilities Division takes no action on an update to the P&P within 30 days of its filing, the update shall be deemed approved.

D. APS may make and implement non-material changes to the P&P without seeking the prior approval of the Director of the Utilities Division, but shall report such non-material changes in the next annual update to the P&P.

IX. Reporting Requirements

APS shall submit the following information to the Commission on an annual basis:

- A. A list of all ~~"extraordinary circumstances"~~ excusing APS' compliance with this Code of Conduct and a report explaining the nature, cause, and duration of each incident.
- B. A report detailing the costs associated with ~~all nonratified transactions between APS and its competitive electric affiliate(s), with the associated costs reported separately for each business activity and for each transaction.~~ all nonratified transactions between APS and its competitive electric affiliate(s), with the associated costs reported separately for each business activity and for each transaction.

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Exhibit 2

- C. A report detailing how many non-standard offer service customers were provided metering services or meter reading services pursuant to R14-2-1615.B and how many electric service providers received consolidated billing services from APS pursuant to R14-2-1615.B.

X. Separation Requirements

- A. APS and its Competitive Activities shall be separate corporate affiliates to the extent required by A.A.C. R14-2-1615 and Decision No. 61973 (October 6, 1999).

B. APS shall not provide Interim Competitive Activities.

B-1. APS and its Competitive Electric Affiliates shall keep separate books and records. APS shall keep accounting records that set forth appropriate cost allocations between APS' Noncompetitive Services, and its Competitive Electric Affiliates. All APS records shall be kept in accordance with the FERC Uniform System of Accounts and Generally Accepted Accounting Principles. As a precondition to transacting any business with APS, books and records of APS' Competitive Electric Affiliates must be made available for inspection by the Arizona Corporation Commission to the extent reasonably necessary to determine compliance with this Code of Conduct.

D-1. APS and its Competitive Electric Affiliates shall not jointly employ the same employees; provided, however, that APS and its Competitive Electric Affiliates may jointly employ have common officers and directors for corporate support, oversight, and governance functions, but APS officers directly responsible for operational matters shall not serve as officers or directors of a Competitive Electric Affiliate. Joint Common officers and directors shall not utilize Confidential Information obtained through the provision of Noncompetitive Service to provide a competitive advantage to any APS Competitive Electric Affiliate. Contracts for services accounted for in performance with Section XI shall not constitute prohibited joint employment if measures are taken to prevent the transfer of Confidential Information between APS and a Competitive Electric Affiliate.

E. This Code of Conduct shall not prohibit APS and its Competitive Electric Affiliates from purchasing shared services from Pinnacle West Capital Corporation in accordance with the P&P; provided, however, that APS, Pinnacle West, and any Competitive Electric Affiliate shall take appropriate measures to

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Exhibit 2

prevent the transfer of Confidential Information between APS and its Competitive
Geometric Electric Affiliates in Pinnacle West.

XI. Transfers of Goods and Services

- A. APS' tariffed goods and services shall be provided to third parties and its Geometric Electric Affiliates at the rates and under the terms and conditions set forth in the tariff.
- B. If APS sells nontariffed goods and services that were developed by APS for sale in the market to its Geometric Electric Affiliates, the transfer price shall be the fair market value. Such goods and services shall be provided to APS' Geometric Electric Affiliates and third parties on a non-discriminatory basis.
- C. All other transfers of nontariffed goods and services from APS to APS' Geometric Electric Affiliates shall be at the higher of fully-allocated cost or fair market value.
- D. If APS' Geometric Electric Affiliates transfer any goods and services to APS that were developed for sale by the Geometric Electric Affiliate in the market, the transfer price shall be the fair market value.
- E. All other transfers of goods and services from APS' Geometric Electric Affiliates to APS shall be at the lower of fully-allocated cost or fair market value.

XII. Joint Marketing

APS and its Geometric Electric Affiliate(s) shall not jointly market their respective services.

XIII. Dissemination, Education, and Compliance

- A. Copies of this Code of Conduct ~~will~~ shall be provided to employees of APS and ~~all its~~ Geometric Electric Affiliates and those authorized agents of APS and ~~all its~~ Geometric Electric Affiliates that are likely to be engaged in activities subject to the Code of Conduct. A copy of the ~~e~~code of Conduct ~~will~~ shall be maintained on the ~~APS' electronic bulletin board known as Vista Public Felders~~ Pinnacle West Capital Corporation's intranet.

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Exhibit 2

- B. Training on the provisions of the Code of Conduct and its implementation ~~will~~ be provided to all APS employees, ~~as well as~~ all ~~authorized agents~~ authorized agents ~~and~~ other ~~employees~~ employees ~~and~~ other ~~employees~~ employees.
- C. Compliance with the Code of Conduct is mandatory. An APS employee's or agent's failure or refusal to abide by or to act according to such standards may subject the employee or agent to disciplinary action, up to and including discharge from employment or termination of the agent's relationship with APS.
- D. Questions regarding this Code of Conduct should be directed to ~~the Business Practices Department~~ Pinnacle West Capital Corporation's Business Practices Department. Compliance with this ~~Code of Conduct~~ Code of Conduct ~~will~~ shall be administered as part of Pinnacle West Capital Corporation's Business Practices Program ~~the APS Standards of Conduct program~~.

XIV. ~~Procedure for Modification~~ to Modify ~~of the Code of Conduct~~

APS may request modifications to ~~its~~ the Code of Conduct by filing an application with the Commission. The application shall set forth the proposed modifications and the reasons supporting them.

XV. Dispute Resolution

To the extent permitted by law, complaints concerning violations of this Code of Conduct shall be processed under the procedures established in A.A.C. Any person or entity alleging that APS has failed to comply with the code of conduct may file a formal complaint with the Commission in accordance with the procedures established in R14-2-212.

EXHIBIT B

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 CARL J. KUNASEK
 3 CHAIRMAN
 4 JIM IRVIN
 5 COMMISSIONER
 6 WILLIAM A. MUNDELL
 7 COMMISSIONER

8 IN THE MATTER OF THE APPLICATION OF)
 9 ARIZONA PUBLIC SERVICE COMPANY FOR) DOCKET NO. E-01345A-98-0473
 10 APPROVAL OF ITS PLAN FOR STRANDED)
 11 COST RECOVERY)

12 IN THE MATTER OF THE FILING OF ARIZONA)
 13 PUBLIC SERVICE COMPANY OF UNBUNDLED) DOCKET NO. E-01345A-97-0773
 14 TARIFFS PURSUANT TO A.A.C. R14-2-1601,)
 15 ET SEQ.)

16 IN THE MATTER OF THE COMPETITION)
 17 IN THE PROVISION OF ELECTRIC SERVICES) DOCKET NO. RE-00000C-94-0165
 18 THROUGHOUT THE STATE OF ARIZONA)
 19) DECISION NO. _____
 20)
 21) **PROPOSED**
 22) **OPINION AND ORDER**

23 DATE OF HEARING: January 24, 2000

24 PLACE OF HEARING: Phoenix, Arizona

25 PRESIDING OFFICER: Jane Rodda

26 APPEARANCES: Mr. Steven M. Wheeler and Mr. Jeffrey B. Guldner, SNELL &
 WILMER, L.L.P., on behalf of Arizona Public Service Company.

Mr. Robert S. Lynch on behalf of the Arizona Transmission
 Dependent Utility Group.

Ms. Jessica Carpenter, Staff Attorney, on behalf of the Residential
 Utility Consumers Office.

Ms. Janet Wagner, Staff Attorney, Legal Division, on behalf of the
 Utilities Division of the Arizona Corporation Commission.

1 **BY THE COMMISSION:**

2 On October 6, 1999, the Arizona Corporation Commission ("Commission") issued
3 Decision No. 61973. In Decision No. 61973, the Commission ordered Arizona Public Service
4 Company ("APS") to file, within 30 days, a Code of Conduct for Commission approval. APS
5 thereafter filed with the Commission on October 28, 1999 a proposed Code of Conduct. APS
6 further indicated that it had sent copies of the proposed Code of Conduct to parties of record in
7 Docket Nos. E-01345A-98-0473, E-01345A-97-0773, RE-00000C-94-0165.

8 APS had previously submitted what it termed an "Interim Code of Conduct" on August 6,
9 1999. Without commenting on the merits of the Interim Code of Conduct, it is our intent to
10 replace the Interim Code of Conduct with the Code of Conduct approved herein.

11 On November 9, 1999, a Procedural Order was issued directing interested parties to
12 provide comments on the APS proposed Code of Conduct filed on October 28, 1999. Enron
13 Corp., the Arizona Transmission Dependent Utility Group ("ATDUG"), and Staff all filed
14 comments. Staff's comments were filed in the form of direct testimony and included an
15 alternative proposed Code of Conduct.

16 In accordance with the Procedural Order, APS filed a final proposed Code of Conduct on
17 January 5, 2000. Staff and ATDUG filed comments on APS' final proposed Code of Conduct on
18 January 18, 2000. Staff's comments were filed as rebuttal testimony and included a revised
19 alternative proposed Code of Conduct. In response, APS prefiled the direct testimony of Jack E.
20 Davis on January 21, 2000.

21 The matter came before a duly authorized Hearing Officer of the Commission at the
22 Commission's offices on January 24, 2000. APS and Staff presented evidence at the hearing.
23 Staff submitted as Exhibit S-3 a revised version of its January 18, 2000 proposed Code of
24 Conduct. APS' and Staff's witnesses were subject to or available for cross-examination by all
25 parties attending the hearing. At the conclusion of the hearing, Staff and APS advised the Hea
26

1 Officer that they intended to continue efforts to reach agreement on a Code of Conduct. The
2 matter was taken under advisement pending submission of a Recommended Opinion and Order to
3 the Commission.

4 On February 22, 2000, Staff and APS jointly submitted a Joint Proposed Code of Conduct
5 that reflected modifications to Staff's alternative proposed Code of Conduct submitted at the
6 hearing as Exhibit S-3. Staff and APS requested that the Joint Proposed Code of Conduct be
7 approved as APS' Code of Conduct required by A.A.C. R14-2-1616. Staff and APS indicated
8 that they had sent copies of the Joint Proposed Code of Conduct to parties of record in the above-
9 captioned matters.

10 FINDINGS OF FACT

11
12 1. In Decision No. 61973, the Commission ordered APS to submit a proposed Code
13 of Conduct for Commission approval.

14 2. On October 28, 1999, APS filed a proposed Code of Conduct in accordance with
15 Decision No. 61973.

16 3. On November 9, 1999, the Commission issued a Procedural Order setting a
17 hearing for January 24, 2000, and directing Staff and interested parties to file comments on APS'
18 proposed Code of Conduct by December 6, 1999.

19 4. Enron Corp., ATDUG, and Staff filed comments on APS' October 28, 1999 Code
20 of Conduct.

21 5. Staff recommended that the Commission approve an alternative Code of Conduct
22 submitted with Staff's comments.

23 6. In accordance with the Procedural Order, APS filed a final proposed Code of
24 Conduct on January 5, 2000.
25
26

1 7. On January 18, 2000, as permitted by the Procedural Order, Staff and ATDUG
2 filed comments on APS' January 5, 2000 Code of Conduct.

3 8. Staff's comments included a revised alternative Code of Conduct that Staff
4 recommended the Commission approve.

5 9. On January 24, 2000, a public hearing was held as scheduled.

6 10. APS and Staff presented evidence regarding how their proposed Codes of Conduct
7 would address anti-competitive activities. Staff submitted a revised proposed Code of Conduct as
8 Exhibit S-3.
9

10 11. At the conclusion of the hearing, Staff and APS indicated that they intended to
11 discuss the resolution of differences between Staff's proposed alternative Code of Conduct and
12 APS' proposed Code of Conduct.

13 12. On February 22, Staff and APS jointly filed a proposed Code of Conduct based on
14 the alternative proposed Code of Conduct submitted by Staff at the hearing. A copy of the Joint
15 Proposed Code of Conduct is attached as Attachment A and incorporated herein by reference.

16 13. The Joint Proposed Code of Conduct applies to the conduct of APS and its
17 competitive retail electric affiliates.
18

19 14. The Joint Proposed Code of Conduct prohibits APS from subsidizing its
20 competitive retail electric affiliates through rates or charges for Noncompetitive Services, as that
21 latter term is defined in A.A.C. R14-2-1601(29).
22

23 15. The Joint Proposed Code of Conduct includes provisions governing separation of
24 books and records; the use of confidential information; the joint employment of personnel; the
25 use of APS' name or logo; nondiscrimination; joint advertising, marketing, and sales;
26

1 representations regarding quality of service; and complaint resolution.

2 16. The Joint Proposed Code of Conduct also addresses procedures governing
3 transactions between APS and a competitive retail electric affiliate.

4 17. The Joint Proposed Code of Conduct requires that APS develop Policies and
5 Procedures to address the implementation of this Code of Conduct, and provides that the Director
6 of the Utilities Division ("Director") shall approve the Policies and Procedures.
7

8 18. The Joint Proposed Code of Conduct provides that nonsubstantial changes to such
9 Policies and Procedures would become effective pending the Director's review, while substantial
10 changes to such Policies and Procedures become effective in 30 days if not modified or rejected
11 by the Director.

12 CONCLUSIONS OF LAW

13 1. APS is a public service corporation within the meaning of Article XV, Section 3 of
14 the Arizona Constitution, and an "Affected Utility" within the meaning of A.A.C. R14-2-1601, *et*
15 *seq.*

16 2. The Joint Proposed Code of Conduct attached as Attachment A satisfies the
17 requirements of A.A.C. R14-2-1616 and Decision No. 61973 and is supported by the evidence in
18 this proceeding.
19

20 3. The Policies and Procedures developed to implement the Code of Conduct are to
21 be consistent with the Joint Proposed Code of Conduct and may be amended in accordance with
22 the procedures set forth herein.
23

24 ORDER

25 IT IS THEREFORE ORDERED that the Joint Proposed Code of Conduct attached as
26

1 Attachment A is approved.

2 IT IS FURTHER ORDERED that the Interim APS Code of Conduct dated August 6, 1999
3 is hereby replaced and superceded by the Joint Proposed Code of Conduct.

4 IT IS FURTHER ORDERED that APS shall submit revised Policies and Procedures to
5 implement the Code of Conduct to the Director of the Utilities Division for approval within 60
6 days of the date of this Decision.

7
8 IT IS FURTHER ORDERED that this Decision and the Joint Proposed Code of Conduct
9 shall become effective immediately.

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

11
12
13 CHAIRMAN

COMMISSIONER

COMMISSIONER

14
15 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of
16 the Arizona Corporation Commission, have hereunto set my hand and
17 caused the official seal of the Commission to be affixed at the Capitol in
18 the City of Phoenix, this _____ day of _____, 2000.

19 BRIAN C. McNEIL
20 Executive Secretary

21 DISSENT _____

22

23

24

25

26

A

JOINT PROPOSED CODE OF CONDUCT

CODE OF CONDUCT

I. Definitions

"APS" means Arizona Public Service Company as it currently exists, as its name may be changed, or as any successor enterprise.

"Bill" means the billing invoice for Noncompetitive Services.

"Competitive Activities" means Competitive Electric Affiliates, Interim Competitive Activities, or Permitted Competitive Activities, as those terms are defined in this Code of Conduct.

"Competitive Electric Affiliate" means any business enterprise related to APS that is also an Electric Service Provider.

"Competitive Services" means all aspects of retail electric services described in A.A.C. R14-2-1601(7).

"Confidential Customer Information" means any non-public customer-specific information obtained by APS as a result of providing Noncompetitive Services or Permitted Competitive Activities.

"Confidential Information" means Confidential Customer Information as that term is defined in this Code of Conduct and any other information obtained through the provision of Noncompetitive Services that would provide a competitive advantage to a Competitive Electric Affiliate.

"Distribution Service" means those services described in A.A.C. R14-2-1601(14).

"Electric Competition Rules" means A.A.C. R14-2-1601 to -1617 including all future amendments and modifications.

"Electric Service Provider" means an entity as described in A.A.C. R14-2-1601(15).

"Extraordinary Circumstance" means any situation that requires APS to act in a manner contrary to this Code of Conduct to protect public interest or safety. Examples include the following: (a) an abnormal system condition requiring manual or automatic action to maintain system frequency, to prevent loss of firm load, to prevent equipment damage, or to prevent disconnection of system elements that could adversely affect reliability or safety; (b) a fuel shortage requiring departure from normal operating procedures to minimize the use of a particular fuel; (c) a condition that requires implementation of emergency procedures as defined in the AISA operating protocols or protocols of any successor; or (d) any applicable law, regulation, court order, or regulatory agency directive requiring APS to act in a manner contrary to the Code of Conduct.

"Interim Competitive Activities" means any Competitive Services, exclusive of those set forth in A.A.C. R14-2-1615(B), that APS may lawfully provide until December 31, 2002.

"Noncompetitive Services" means those services described in A.A.C. R14-2-1601(29).

"Permitted Competitive Activities" means those Competitive Services that APS may provide pursuant to A.A.C. R14-2-1615(B), except for any service provided as part of Standard Offer Service.

"Policies and Procedures" or "P&P" means those policies and procedures developed by APS to implement this Code of Conduct.

"Same Terms" means that APS shall provide Noncompetitive Services to its Competitive Activities and Third Parties on the same terms and conditions.

"Standard Offer Service" means the bundled provision of retail electric service as described in A.A.C. R14-2-1601(38).

"Third Party" means any Electric Service Provider that does not fall within the definition of APS or Competitive Activities, as those terms are defined in this Code of Conduct.

II. Applicability of Code of Conduct

The Code of Conduct applies to the conduct of APS and its Competitive Activities, unless an Extraordinary Circumstance excuses compliance.

All employees and authorized agents of APS shall comply with this Code of Conduct. Failure to comply with this Code of Conduct will subject the employee to disciplinary actions as described in Section XIII.

III. Treatment of Similarly Situated Persons

- A. APS shall apply its tariffs in the same manner to similarly situated entities. If a tariff provision allows for discretion in its application, APS shall apply that provision in a non-discriminatory manner between its Competitive Activities and all Third Parties and their respective customers.
- B. APS shall process all similar requests for Noncompetitive Services and for Permitted Competitive Activities, if applicable, in the same manner and within the same time period.
- C. APS shall provide access to Distribution Service-specific information (including information about available distribution capability, transmission access, and

curtailments) to its Competitive Electric Affiliates and Third Parties concurrently and under the same terms and conditions.

IV. Use of Confidential Customer Information

- A. APS shall not provide Confidential Customer Information to any Competitive Electric Affiliate or Third Party without the customer's written authorization. Such information may be provided only to the extent specifically authorized.
- B. APS shall inform any Competitive Electric Affiliate or Third Party seeking Confidential Customer Information that such information may be released only after APS receives the customer's written authorization.

V. Use of the Bill and Promotions within the Bill Envelope

- A. If APS decides to include any amounts due for its Competitive Activities within the Bill, APS shall develop a section in its P&P to ensure equal access to billing services for Third Parties which shall provide that APS will include in its Bill the amounts due for Competitive Services to any Third Party on the Same Terms, upon request.
- B. This provision shall not prevent APS' Competitive Activities or any Third Party from including amounts due for Noncompetitive Services in its own consolidated billing statement, as long as the customer receiving such consolidated billing statement has authorized APS' Competitive Activities or a Third Party, as applicable, to act as its agent for such purpose.
- C. If APS chooses to insert any advertising or promotional materials for its Competitive Activities or for any Third Party's Competitive Services into the envelope for the Bill or to print such advertisements on the Bill or billing envelope, APS shall develop a section in its P&P to ensure equal access to advertising space in or on the Bill or billing envelope.

VI. Customer Telephone Calls

Telephone numbers and websites used by APS for provision of Noncompetitive Services shall be different from those used by its Competitive Electric Affiliates.

VII. Prohibition on Suggestion of Utility Advantage

- A. APS shall not state in any advertising, promotional materials, or sales efforts that a consumer who purchases services from APS' Competitive Activities will receive preferential treatment in the provision of Noncompetitive Services or that

any other advantage regarding the provision of Noncompetitive Services will accrue to that consumer.

- B. The name or logo of APS as a utility distribution company shall not be used in written promotional advertising material circulated by a Competitive Electric Affiliate.
- C. APS personnel shall not specify to any customer or potential customer a preference for any Competitive Service provided by APS' Competitive Activities over those of any Third Party.
- D. APS personnel shall not specify to any customer or potential customer a preference for any Competitive Service provided by a Third Party over any Competitive Service provided by any other Third Party.
- E. APS personnel providing Noncompetitive Services shall either inform customers who inquire about Competitive Services that a list of Electric Service Providers is available at no charge from the Arizona Corporation Commission on its website or by telephone, and upon request shall provide the customers with the appropriate Arizona Corporation Commission website address and telephone number, or may provide such customers with a copy of the current Arizona Corporation Commission list of such providers.
- F. APS shall not require that a consumer purchase any Competitive Service from APS' Competitive Activities as a condition to providing Noncompetitive Services.
- G. Prior to the divestiture of APS generation pursuant to Arizona Corporation Commission Decision No. 61973 (October 6, 1999), APS generation service shall not be sold on a discounted basis to Standard Offer Service customers without the express permission of the Arizona Corporation Commission.

VIII. Accounting for Costs

- A. APS shall not subsidize its Competitive Activities through any rates or charges for Noncompetitive Services. However, this provision does not require APS to charge more than its authorized tariff rate for any Noncompetitive Service.
- B. All transactions between APS and its Competitive Electric Affiliate shall be accounted for in accordance with APS' P&P, which shall be developed to describe the cost allocation of all transactions pertaining to APS and its Competitive Electric Affiliates in a manner that ensures that there is no subsidization of the Competitive Electric Affiliate by the Noncompetitive

Services of APS. Any material violation of the P&P which would constitute engagement in unlawful anticompetitive behavior shall constitute a violation of this Code of Conduct.

- C. The initial P&P shall be submitted to the Commission for review and approval. If no action is taken by the Commission or its designee within 60 days of the filing, the P&P shall be deemed approved. Beginning one year from the date of approval of the P&P, APS shall notify the Commission by filing annual updates to the P&P, including any and all Commission approved modifications as specified in subsection D, to allocation methods and changes in direct and indirect allocators used in the P&P. If no action is taken by the Commission or its designee within 30 days of its filing, the update shall be deemed approved.
- D. APS may not make or implement any material change to the P&P without seeking the prior approval of the Commission or its designee. Once notification is made by APS of an intended modification, if no action is taken by the Commission or its designee within 30 days of its filing, the modification shall be deemed approved.

IX. Reporting Requirements

APS shall submit the following information to the Commission on an annual basis:

- A. A list of all Extraordinary Circumstances excusing APS' compliance with this Code of Conduct and a report explaining the nature, cause, and duration of each incident.
- B. A report detailing the costs associated with all nontariffed transactions between APS and its Competitive Electric Affiliates, with the associated costs reported separately for each business activity and for each transaction.
- C. A report detailing how many non-Standard Offer Service customers were provided metering services or meter reading services pursuant to R14-2-1615.B and how many Electric Service Providers received consolidated billing services from APS pursuant to R14-2-1615.B.

X. Separation Requirements

- A. APS and its Competitive Activities shall be separate corporate affiliates to the extent required by A.A.C. R14-2-1615 and Decision No. 61973 (October 6, 1999).
- B. APS shall not provide Interim Competitive Activities.

- C. APS and its Competitive Electric Affiliates shall keep separate books and records. APS shall keep accounting records that set forth appropriate cost allocations between APS' Noncompetitive Services, and its Competitive Electric Affiliates. All APS records shall be kept in accordance with the FERC Uniform System of Accounts and Generally Accepted Accounting Principles. As a precondition to transacting any business with APS, books and records of APS' Competitive Electric Affiliates must be made available for inspection by the Arizona Corporation Commission to the extent reasonably necessary to determine compliance with this Code of Conduct.
- D. APS and its Competitive Electric Affiliates shall not jointly employ the same employees; provided, however, that APS and its Competitive Electric Affiliates may have common officers and directors for corporate support, oversight, and governance, but APS officers directly responsible for operational matters shall not serve as officers or directors of a Competitive Electric Affiliate. Common officers and directors shall not utilize Confidential Information obtained through the provision of Noncompetitive Service to provide a competitive advantage to a Competitive Electric Affiliate. Contracts for services accounted for in conformance with Section XI shall not constitute prohibited joint employment if measures are taken to prevent the transfer of Confidential Information between APS and a Competitive Electric Affiliate.
- E. This Code of Conduct shall not prohibit APS and its Competitive Electric Affiliates from purchasing shared services from Pinnacle West Capital Corporation in accordance with the P&P; provided, however, that APS, Pinnacle West, and any Competitive Electric Affiliate shall take appropriate measures to prevent the transfer of Confidential Information between APS and its Competitive Electric Affiliates via Pinnacle West.

XI. Transfers of Goods and Services

- A. APS' tariffed goods and services shall be provided to Third Parties and its Competitive Electric Affiliates at the rates and under the terms and conditions set forth in the tariff.
- B. If APS sells nontariffed goods and services that were developed by APS for sale in the market to its Competitive Electric Affiliates, the transfer price shall be the fair market value. Such goods and services shall be provided to APS' Competitive Electric Affiliates and Third Parties on a non-discriminatory basis.
- C. All other transfers of nontariffed goods and services from APS to APS' Competitive Electric Affiliates shall be at the higher of fully-allocated cost or fair market value.

- D. If APS' Competitive Electric Affiliates transfer any goods and services to APS that were developed for sale by the Competitive Electric Affiliate in the market, the transfer price shall be the fair market value.
- E. All other transfers of goods and services from APS' Competitive Electric Affiliates to APS shall be at the lower of fully-allocated cost or fair market value.

XII. Joint Marketing

APS and its Competitive Electric Affiliates shall not jointly market their respective services.

XIII. Dissemination, Education, and Compliance

- A. Copies of this Code of Conduct shall be provided to employees of APS and its Competitive Electric Affiliates and those authorized agents of APS and its Competitive Electric Affiliates that are likely to be engaged in activities subject to the Code of Conduct. A copy of the Code of Conduct shall be maintained on Pinnacle West Capital Corporation's intranet.
- B. Training on the provisions of the Code of Conduct and its implementation shall be provided to all APS employees, as well as to authorized agents that are likely to be engaged in activities subject to the Code of Conduct.
- C. Compliance with the Code of Conduct is mandatory. An APS employee's or agent's failure or refusal to abide by or to act according to such standards may subject the employee or agent to disciplinary action, up to and including discharge from employment or termination of the agent's relationship with APS.
- D. Questions regarding this Code of Conduct should be directed to Pinnacle West Capital Corporation's Business Practices Department. Compliance with this Code of Conduct shall be administered as part of Pinnacle West Capital Corporation's Business Practices Program.

XIV. Procedure to Modify the Code of Conduct

APS may request modifications to the Code of Conduct by filing an application with the Commission. The application shall set forth the proposed modifications and the reasons supporting them.

XV. Dispute Resolution

To the extent permitted by law, complaints concerning violations of this Code of Conduct shall be processed under the procedures established in A.A.C. R14-2-212.